



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM146Jul18

In the matter between

The Investment Corporation of Dubai

Primary Acquiring Firm

And

Kerzner International Holdings Limited

Primary Target Firm

Panel	: Mondo Mazwai (Presiding Member)
	: Medi Mokuena (Tribunal Member)
	: Anton Roskam (Tribunal Member)
Heard on	: 26 September 2018
Order Issued on	: 3 October 2018
Reasons Issued on	: 16 November 2018

REASONS FOR DECISION

Approval

[1] On 1 October 2018, the Competition Tribunal (“Tribunal”) unconditionally approved the proposed transaction involving the Investment Corporation of Dubai (“ICD”) and Kerzner International Holdings Limited (“KIHL”), hereinafter collectively referred to as the merging parties.

[2] The reasons for the approval of the proposed transaction follow.

Parties to the transaction

Primary Acquiring Firm

[3] ICD is an investment company incorporated in accordance with the laws of Dubai, United Arab Emirates (“Dubai”). ICD is controlled by the government of Dubai. ICD controls a number of entities in South Africa and internationally. ICD and all its subsidiaries are hereinafter referred to as the ‘ICD Group’.

[4] The ICD Group is the investment arm of the government of Dubai. The ICD Group invests in various sectors including the hospitality and leisure sector, and the real estate sector.

Primary Target Firm

[5] KIHL is jointly controlled by ICD and Colony K-Two Investor, LCC (“Colony”).¹ KIHL controls a number of entities globally. In South Africa, KIHL controls the One & Only Resorts (Southern Africa) Pty Ltd (“OORSA”) and exercises joint control with ICD over the One & Only Hotel in Cape Town Holdings (Pty) Ltd (“OOCT Holdings”). OOCT Holdings ultimately controls and operates the 5-star luxury hotel, One & Only Hotel Cape Town (“One & Only Hotel”) which is located in Victoria & Alfred (V&A) Waterfront.

[6] KIHL is an international developer of destination resorts and luxury hotels. Through OORSA, KIHL also offers hotel administration to the One & Only Hotel.

Proposed transaction

[7] In terms of the *Share Purchase Agreement*, the proposed transaction entails ICD - which currently owns 94% of KIHL’s share capital - acquiring the remaining share capital (6%) from Colony, which has negative control by virtue of its shareholding.² Post-merger, ICD will exercise sole ownership and control over KIHL.

¹ Colony exercises negative control over KIHL.

² See Transcript, pg 5.

Impact on competition

- [8] The Competition Commission (“Commission”) found a horizontal overlap between the activities of the merging parties in the market for the provision of 5-star luxury hotel accommodation. In identifying the geographical market, the Commission was of the view that the scope should be limited to the greater Cape Town City Centre³ as competition between graded hotels is local and this particular area is within a 5km radius of the One & Only Hotel; but it did not conclude on the relevant geographical market for reasons below.
- [9] The Commission held that the proposed transaction was unlikely to alter the pre-merger market structure since ICD was merely increasing its shareholding from 94% to 100%. Furthermore, there are other 5-star luxury hotels in the Cape Town City Centre that are able to exercise competitive restraints against the merged entity.
- [10] Based on the above, the Commission concluded that the proposed transaction was unlikely to substantially prevent or lessen competition in the relevant market. We see no reason to differ from the Commission’s conclusion.

Public interest

- [11] The merging parties submitted that the proposed transaction will not have any negative effects on employment. In the same vein, the Commission confirmed that the proposed transaction will not result in any retrenchments or job losses.
- [12] The Tribunal noted that the South African Commercial, Catering and Allied Workers Union (“SACCAWU”) indicated that it had not received a copy of the merger filing. The Commission confirmed that since SACCAWU’s letter, it had subsequently sent the non-confidential merger notice to SACCAWU and had engaged SACCAWU on its concerns that the merger would lead to job losses. After clarifying that there would be no job losses, SACCAWU indicated to the Commission that its concerns had been addressed.

³ The Cape Town Centre includes the V&A Waterfront.

[13] The Commission has since provided the Tribunal with the relevant correspondence which only took place after the merger record was filed with the Tribunal.

[14] The proposed transaction raises no other public interest concerns.

Conclusion

[15] In light of the above, we conclude that the proposed transaction is unlikely to prevent or lessen competition in any relevant market. In addition, no other public interest concerns arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.


Ms Mondo Mazwai

16 November 2018

Date

Mrs Medi Mokuena and Mr Anton Roskam concurring.

Tribunal Researcher: Busisiwe Masina

For the merging parties: D Smith of ENSafrica

For the Commission: R Ncheche and T Mahlangu